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Association Against the Prohibition Amendment

Prohibition enforcement

Washington

1930

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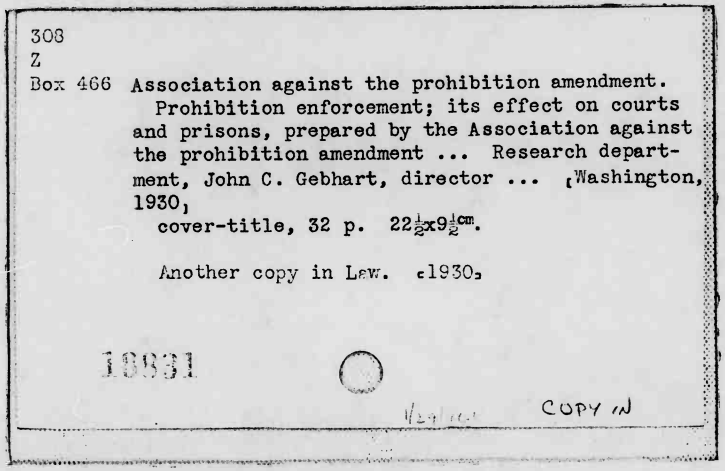

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PROHIBITION ENFORCEMENT

Its Effect on Courts and Prisons

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Against the Prohibition
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PROHIBITION ENFORCEMENT

Its Effect on Courts and Prisons

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In 1916, according to the Attorney General's reports, the number of criminal cases terminated in the federal courts was 20,432, of which 14,128 resulted in convictions. In 1929 the number terminated was 85,328 and of these 67,255 resulted in convictions. Federal prisons in 1916 received 2,787 prisoners from the courts, while in 1929 they received 11,192. In 1916 the leading offenses for which persons were confined in federal prisons were fraudulent use of the mails, counterfeiting, robbery in interstate traffic and violations of the drug act. All of these offenses except violation of the drug act account for a much smaller proportion of all prisoners now than they did in 1916.

As early as September, 1922, Congress passed a law providing for fourteen new judgeships, but on the theory that the peak had been reached, the law provided that the number could not be increased beyond that amount without special legislation. While Congress has increased by special acts the number of judgeships since 1922, present provisions are still far from adequate.

Neither were we prepared to receive into our federal prisons the hosts of violators of the prohibition laws which our federal courts turn out every year. We had only five federal prisons and penitentiaries in 1916; we have the same number today, though the number sentenced now is four times as great as it was then.

In federal criminal procedure jury trial must be given to all persons charged with violating a federal act. The only exception to this is the summary trial of minor offenses in the police courts of the District of Columbia. In the states most misdemeanors can be tried on summary proceedings. Jury trial is a slow and costly procedure.

INTENTIONAL SECOND EXPOSURE

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In the prosecution of prohibition cases, therefore, it has been necessary to resort to expedients which would reduce to a minimum the amount of time which the courts and United States attorneys must give to prohibition cases. In imposing penalties for prohibition violations the courts have had also to consider the limited accommodations for federal prisoners. The constitutional provisions requiring jury trial for all those who plead not guilty to federal offenses have resulted in the uniform adoption of the expedient of "bargain days," by which the United States attorney bargains with the defendant to plead guilty and to accept a light fine or a short sentence in order to avoid the slow process of jury trial.

CROWDING OF COURT CALENDARS

Prohibition is almost solely responsible for the crowding of federal court calendars. Prohibition cases now account for two-thirds of all criminal cases handled in federal district courts. In 1920, the first year of prohibition, only 5,095 criminal prohibition cases were tried in federal courts. It reached 58,429 in 1928, followed by a slight drop to 56,455 in 1929. Since 1921 the ratio of prohibition to all criminal cases has never been less than 51 per cent and for the last two years it has been over 66 per cent.

Criminal Cases Terminated in Federal Courts

Year	All Cases	Prohibition Cases	Per Cent
1920	34,230	5,095	14.9
1921	47,299	21,297	45.0
1922	53,155	28,743	54.1
1923	68,152	42,730	62.7
1924	73,488	46,609	63.4
1925	92,711	47,925	51.7
1926	76,536	48,529	63.4
1927	67,279	40,748	60.6
1928	88,336	58,429	66.1
1929	85,328	56,455	66.2

Recent statements by authoritative officials imply that other laws recently adopted, notably the auto theft law and the Mann act, are responsible equally with prohibition for the increase in criminal court cases. We do not have complete data on the number of auto theft cases handled annually, but the official reports indicate that

about two thousand such cases are disposed of each year, while Mann act cases run pretty uniformly at about four hundred a year. Such cases are, of course, a mere bagatelle compared with the 56,000 prohibition cases tried annually.

It is impracticable to analyze all the types of cases disposed of by the federal courts for the pre-prohibition and the post-prohibition years. The situation is complicated by the fact that the selective draft act and the espionage act, which were passed as war measures, resulted in an accumulation of cases in the early days of the prohibition period. A large part of the decline in the normal work of the federal courts can be attributed to the clearing up of court calendars of these two types of cases.

In Table I (see page 20) will be found a summary of all criminal cases handled by the federal courts from 1910 to 1929, with deductions of prohibition, selective draft and espionage cases. These three types are shown separately. Since 1919 espionage cases are of negligible importance, and no such cases have been tried since 1922. In 1925, 18,471 selective draft cases were disposed of. If we make these three deductions we get a net balance of cases which represents what the normal work of the courts would have been if there had been no prohibition cases.

In 1920 the "net" number of criminal cases (exclusive of prohibition, selective draft and espionage cases) tried in the federal courts was 27,774. The figures fluctuated from year to year from that time on, but in 1929 the number was only 28,865, an increase of only 3.9 per cent, a very slight increase indeed in all criminal cases considering the increase in the population and the enactment of new federal laws.

There has been a steady increase in the number of prohibition cases tried annually and in the number of convictions secured. In a supplementary table (Table II, page 21) is given a summary of the criminal cases prosecuted under the national prohibition act for each year from 1920 to 1929. The total number of cases terminated in 1920 was 5,095. The total number terminated in 1929 was 56,455. The preliminary figure for 1930 is 52,437. The reports show a high rate of convictions. The ratio of convictions to total cases terminated has never been less than 76 per cent and in some years it has reached 85 per cent. On their face, these figures would seem to indicate effective enforcement. However, it should be noted that some 12 to 20 per cent of all cases are "nolle prossed" or dismissed each year. Such dis-

posal of cases tends to keep down the rate of acquittals, which has never exceeded 4.2 per cent.

"Bargain Days"

Strictly speaking, however, only a small proportion of the cases are real convictions, for from 90 to 95 per cent of all of the convictions are secured on pleas of guilty. In a supplementary table (see Table III, page 22) a comparison is made of the number of convictions secured on pleas of guilty and by jury trials in prohibition cases and in all other criminal actions. In all other criminal cases tried in federal courts the pleas of guilty account for from 70 to 80 per cent of all convictions.

Among the prohibition cases which actually go to trial—which, as we have indicated, represent only from 4 to 10 per cent of all cases disposed of—convictions are secured in from 60 to 75 per cent of the cases. There is little variation in the rate of convictions. (See Table IV, page 23.)

The resort to the expedient of "bargain day" proceedings is due not only to the difficulty of securing convictions in jury cases, but also because of the delay and extra expense which would be incurred if jury trial were extended to all cases tried in the federal courts. The latter consideration is probably the controlling one. It is utterly impracticable to offer jury trial to all types of offenders, without increasing the appropriations for prohibition enforcement to a staggering figure. The procedure in such cases involves indictment by a grand jury and later trial by a petit jury. A former United States attorney has estimated that in jury trial cases only two cases can be disposed of a day, while under the "bargain day" procedure it is not uncommon to dispose of a hundred cases in a day.

Untried Cases

"Bargain day" procedure has reduced our federal courts, which were once dignified tribunals, practically to the status of police courts. In spite of this "unseemly" practice, pending and inactive cases have accumulated at an alarming rate. Cases must be brought to trial within a period of three years if they are to come within the statute of limitations. Furthermore, the carrying of inactive cases on the dockets impedes all other work of the courts. Many of the cases, therefore, must be dismissed or "nolle prossed" to keep the calendars reasonably up to date. It is likely that most of the cases which are selected for dismissal and "nolle prosse" action are chiefly those in which the government feels that it does

not have a strong case, but in the wholesale weeding-out necessary every year it is not unlikely that many cases in which the government has ample evidence must be discarded. Many cases are "nolle prossed" or dismissed because the defendant has "skipped bail" or because witnesses have disappeared.

The total number of cases pending at the end of the fiscal year each year from 1920 to 1929 is given in Table V (see page 23). These cases are separated into prohibition and all other criminal actions. The number of pending prohibition cases reached its peak of 24,684 in 1925. In the following year 10,208 cases were "nolle prossed" and dismissed. For subsequent years the number of cases so disposed of has averaged about 8,000. In spite of this wholesale weeding-out of inactive cases the number of pending cases still runs between 18,000 and 21,000.

It is interesting to compare all other pending cases with the prohibition cases. The blocking of the federal courts with prohibition cases has, of course, retarded action on all other types of cases. From 1920 to 1924 the number of pending cases was reduced from 47,778 to 41,614. Many of these pending cases were selective draft and espionage cases. In 1924 the senior circuit court judges recommended drastic action to clear court calendars of inactive cases. In the following year 25,241 criminal cases (exclusive of prohibition) were "nolle prossed" and dismissed. Of this number 18,467 were selective draft cases. This reduced the number pending at the end of 1925 to 22,041, as compared with 41,614 in the previous year. The number of inactive cases disposed of without trial since 1925 has been between 7,000 and 10,000 in both categories. Pending cases, other than prohibition, in the criminal division in 1929 were only 12,810, as compared with 18,690 prohibition cases.

CIVIL CASES

Not only has the accumulation of prohibition cases impeded the prosecution of other criminal cases, but it has impeded the trial of civil cases to which the United States is a party. Padlock injunction cases, libel suits for the confiscation of contraband liquor, boats and vehicles used in transporting liquor now take up over half of all the civil actions to which the United States is a party. Though padlock injunctions are technically equity proceedings, they are for all practical purposes criminal prosecutions.

Padlock Injunctions

According to a pamphlet recently published by the Prohibition Unit of the Treasury Department: "The theory of injunction as practiced today by courts of equity probably originated in the Star Chamber of England in the tenth or eleventh centuries. At that time its use was undoubtedly subversive of justice, and worked great hardship upon the people." It is claimed by the Prohibition Unit, however, that: "The padlock law has the approval of the public. It makes no martyrs, it brands no citizen as a criminal, it fills no prisons—and yet it accomplishes effectively what the national prohibition law was framed to accomplish."

Many careful students of American law and judicial procedure will not agree with the Prohibition Unit in its claim that the use of the padlock injunction is not subversive of justice and that it has the approval of the public. Professor Howard L. McBain contends that in practice the padlock injunction is used as a substitute for criminal prosecution. He says:

> What happens is this: Having discovered evidence of a crime, the prosecutor refuses to accept a plea of guilty in exchange for a light fine. He can, of course, proceed to prosecution before a jury and hope for a sentence of fine or imprisonment or both. But he may know all too well the condoning temper of his probable jury. And he may have so many cases on hand that he can not possibly try them before juries in any reasonable time. He elects, therefore, to avoid the jury by resort to the injunctive process. He presents his evidence of criminal guilt to a single judge, sitting as chancellor, and secures his injunction. He may even, by the threat of criminal prosecution and a jail sentence, bludgeon the "accused" into not contesting the suit. At any rate, the process is often incredibly speedy. In three days in the month of June, 1928, a single federal judge in New York City granted forty-six injunctions in liquor cases. How many jury cases could probably have been disposed of in like time?

The law also provides that if the injunction is violated, in other words if the person whose premises are padlocked does not live up to the order of the court and permits the premises to be used for any purpose whatever, he may be held guilty of contempt of court. He may be summarily fined or imprisoned, or both, by order of a

federal judge without jury trial. In the opinion of Professor McBain and others, this is dangerously close to a violation of the letter of the Constitution and is certainly an evasion of its spirit. Certainly, in many cases the application of the padlock injunction has worked serious hardship on innocent parties. The law provides that the premises padlocked may not be used for any purpose whatever. The padlock does not apply only to the use of the premises for the manufacture or sale of intoxicating liquor. It often happens, therefore, that many innocent owners are unaware that their premises have been used for the manufacture or sale of liquor until they are haled into court and their premises padlocked. The owner is deprived of any income whatever from his property for a period of a year.

Increase in Civil Cases

The number of prohibition cases tried as civil actions to which the United States is a party has increased from 92 in 1920 to 12,938 in 1930. Most of these actions are applications for padlock injunctions. The number of injunctions issued has increased from 466 in 1921 to 7,048 in 1929. A fair proportion, however, are libel suits brought by the government to secure the confiscation of alleged contraband property and other similar actions. The congestion of civil cases because of prohibition is almost as serious as the congestion of criminal cases. In 1920 only 16.6 per cent of all civil cases to which the United States was a party were prohibition actions. In 1930 the ratio was 52.3 per cent. The increase in all civil cases to which the United States was a party for the eleven-year period (from 1920 to 1930) was 347 per cent. If we exclude prohibition cases the increase is only 117 per cent.

Civil Cases Terminated, in Which the United States Was a Party

Year	All Cases	Prohibition Cases	Per Cent
1920	5,526	92	16.6
1921	6,301	622	9.8
1922	8,170	1,537	18.8
1923	10,037	2,670	26.6
1924	11,121	4,210	37.9
1925	13,968	5,927	42.4
1926	17,236	8,338	48.4
1927	19,953	10,419	52.2
1928	18,589	8,617	46.4
1929	21,733	10,617	50.4
1930	24,722	12,938	52.3

The record of the trial of civil prohibition cases is similar to that of criminal cases. (See Table VI, page 24.) During the eleven-year period, roughly from 75 to 80 per cent of the cases have resulted in judgments for the United States. Only from 4 to 10 per cent resulted in judgments against the United States. The small proportion of unfavorable judgments, however, is largely accounted for by the fact that the cases dismissed without trial or after compromise vary from 10 to 30 per cent.

A record of the results in injunctions and libel suits has been kept by the Prohibition Unit for three years only, 1927 to 1929. In injunction suits 71 per cent resulted in judgments for the United States in 1927 and 81.6 per cent in 1929. The results in the case of libels are quite similar, 76.9 per cent resulting in "forfeiture" to the United States in 1927 and 82.9 in 1929.

A PLEA FOR ADEQUATE ENFORCEMENT

This brief summary of the disposal of prohibition cases in our federal courts indicates almost without further comment that the whole process is futile and costly. Mr. Emory Buckner, testifying in 1926, said: "All that we can eventually do, unless the court situation is changed and greatly enlarged, is to call the roll and charge an exit fee."

Mr. Buckner vigorously opposed the theory that the collection of fines (running from $5,000,000 to $6,000,000 a year) is to be considered an offset to the cost of enforcement. He said: "I read constantly the arguments that prohibition enforcement is paying its way because you collect so many fines. . . . I think that Mr. Mellon should collect the revenues of the country and that the Department of Justice should put lawbreakers in jail."

Mr. Buckner seriously proposed to the congressional committee, which at that time was considering several enforcement bills, that the number of courts and court personnel, as well as field prohibition agents, must be greatly increased to secure real enforcement and prosecution. He was entirely opposed to the "bargain day" policy of disposing of cases. In his opinion, it was utterly impossible for the courts to apply proper penalties in cases disposed of in such a hurried manner. He filed with the committee an elaborate budget providing for what he considered to be, as a result of his experience as prosecuting attorney, an adequate enforcement program for the federal districts which include the state of New York. His budget was predicated on the theory that legislation could be passed which would permit the trial of all prohibition cases without juries, even where the defendant pleads not guilty. Many believe, however, that such legislation would be unconstitutional. But even if jury trial could be abolished for prohibition cases, Mr. Buckner estimated that an adequate enforcement program covering the entire New York district would call for an appropriation of $20,021,750 a year. If, however, jury trial could not be abolished, he estimated that the cost of adequate enforcement for New York State would be $70,076,125 a year.

Many believed that Mr. Buckner's plan had real merit. There is no record, however, that any bill was introduced carrying out his suggestions. Certainly, no appropriation which even approached his figure was ever made. Mr. Buckner's estimate applied only to New York State. Using it as a basis, it is possible to estimate what an adequate enforcement program would cost if applied throughout the entire country. Federal prohibition cases tried in New York State account for roughly 20 per cent of all federal prohibition cases. We should need, therefore, to multiply Mr. Buckner's estimates by five in order to arrive at an estimate of an adequate enforcement program for the entire country. Assuming, therefore, that jury trials could be abolished entirely in prohibition cases, the cost for the entire country for adequate enforcement would be roughly $100,000,000 a year. If, however, jury trials could not be abolished, the total cost for the entire country would be over $350,000,000 a year.

PROSECUTION IN STATE COURTS

We are constantly told that prohibition can only succeed if the states, acting under the "concurrent" clause of the Eighteenth Amendment, cooperate with the federal government in the enforcement of prohibition. It has been repeatedly suggested that the federal enforcement agencies should concentrate on the major cases involving the wholesale manufacture and distribution of intoxicating liquor, and that the states should concentrate on minor liquor law violations.

A field study of the police and court records of each of the forty-eight states must be made before final conclusions can be drawn as to the merits of concurrent action on prohibition enforcement. It is surprising that neither the federal authorities nor the private organizations

favoring prohibition has made such a survey. We have therefore no authoritative data with which to determine whether cooperation with federal agencies is closer in those states which have state enforcement acts than in those which have repealed them. We do not know whether more convictions are secured in state courts or in federal courts, or whether penalties imposed by state courts are more severe than those given by federal courts. Nor do we know whether in those states which had prohibition before 1920, prohibition enforcement is less of a problem now than it was before the Eighteenth Amendment and the Volstead act were adopted. These are all important phases of the prohibition controversy, and yet, with the exception of a few states, no authoritative data can be found which will throw any light on them.

The Prohibition Unit has recently published a "factual survey" entitled "State Cooperation." Factual data as to the status of local enforcement in the government's monograph are very meager and inconclusive. Police and court records of liquor law prosecutions are given for three states only, Massachusetts, Pennsylvania and New York. One of these states, New York, repealed its enforcement act in 1923. Massachusetts was contemplating repeal when the report was written, and has since, by popular referendum, repealed its act.

No complete record of state prosecution of prohibition cases is given for Pennsylvania. The report merely states that in western Pennsylvania 3,945 arrests were made by federal agents in cooperation with state agents, and that these cases were tried in local courts. "In most cases," the report says, "heavier fines and longer sentences were imposed than are usually given for similar offenses in federal courts." A comparison is made of fourteen selected cases prosecuted in one county of Pennsylvania with nineteen cases prosecuted in federal courts. In the state courts fines ranged from $750 to $3,600, and sentences from one to three and a half years. In the federal cases cited, fines ranged from $50 to $500 and sentences from one to six months. There is no indication here that the federal authorities are concentrating on the more serious cases and leaving minor infractions to state officials.

The only facts with regard to Massachusetts are contained in a portion of the police commissioner's report to the governor of the Commonwealth, dated December 21, 1929, which is quoted verbatim. From this meager record we learn that in Massachusetts 3,947 arrests were made

for violation of liquor laws, and that 293 persons were sentenced to jail. Of this number 239 sentences were suspended. It is also reported that 3,265 persons were fined, but of this number only 132 fines were suspended.

New York is singled out for rather lengthy treatment because that state in 1923 repealed its state enforcement act. The number of convictions under the Mullan-Gage act, which was in force for two years only, was 4,632. During the same period there were 4,084 convictions in federal courts.

For the last three years the reports of the Prohibition Unit have given the number of cases terminated in state courts in which federal agents assisted. These reports are summarized in the following table. It is impossible to determine what proportion of all cases tried in state courts is covered in this tabulation. In 1928, the Prohibition Unit reported that 9,025 convictions were secured in state courts in cases in which the federal authorities assisted. In 1929 there were 13,605 convictions, but in 1930 they dropped to 7,609. Practically the same ratio of convictions to acquittals obtains in state courts as in federal courts; roughly 87 to 90 per cent resulted in convictions. There is no record of how many of those convicted are fined and how many are sent to jail. The average length of sentence for each conviction, however, is practically the same as the average sentence in federal courts. In 1928 the average length of sentence for each conviction in state courts was 34.8 days. In federal courts it was 34.4. In 1929 the average sentence in state courts was 53.1 days, and in federal courts, 47.3. In 1930, however, the average sentence in state courts was considerably less than that in federal courts. It was 75 days in state courts, and 94.3 in federal courts.

Individuals Tried in State Courts in Cases in Which Federal Agents Assisted

Year	Terminated	Convicted	Per Cent	Acquitted	Per Cent	Average Sentence Per Conviction (Days)
1928	10,371	9,025	87.0	1,346	13.0	34.8
1929	15,042	13,605	90.0	1,437	10.0	53.1
1930	8,499	7,609	89.5	890	10.5	75.0

PROHIBITION AND CROWDED PRISONS

Federal penal institutions are entirely inadequate for housing the steadily increasing number of prohibition violators. State and county jails have had to take the overflow of prisoners. For some time it has been the practice to board out minor federal offenders in county jails and workhouses. With the coming of prohibition the number of "minor" offenders housed in state and county institutions has increased so rapidly that many of the local institutions are protesting against the arrangement because it contributes to the overcrowding of local institutions.

There is no official record of the number of federal prisoners sent to state and county jails. In the 1929 report of the United States Attorney General, Mr. Sanford Bates, superintendent of federal prisons, said: "The United States Prison Bureau today does not know how many federal prisoners there are in county jails. An effort is being made to find out, but with the present personnel there is no prospect of their being able to use the knowledge even if obtained."

Distribution of Prohibition Prisoners

From incomplete records we have tried to account for the distribution of prisoners sentenced by the federal courts for violation of the national prohibition law. In the following table is given the number of jail sentences and fines of individuals convicted of violations of the national prohibition act in federal courts. These figures were compiled by the Prohibition Unit from the records of the Department of Justice. Roughly two-thirds of those convicted are let off with fines.

Convictions in Federal Courts of Violations of National Prohibition Act, Classified by Jail Sentences and Fines

Year	All Convictions	Jail Sentences		Fines		Average Sentence (Days)
		Number	Per Cent	Number	Per Cent	
1927	36,546	11,818	32.3	24,728	67.7	136.4
1928	58,813	15,793	27.0	43,020	73.0	120.7
1929	56,546	19,074	33.7	37,472	66.3	140.4
1930	54,085	22,405	41.4	31,680	58.6	227.7

Since 1928 there has been an increase in the proportion of jail sentences and also an increase in the average length of sentence. In 1928 only 27 per cent of those convicted were given jail sentences; in 1930 the proportion was 41.4 per cent. At the same time the jail sentences increased from an average of 120.7 days to 227.7 days.

Moreover, only a small proportion of those who are given jail sentences is sent to federal prisons. Of the 19,074 offenders receiving jail sentences in 1929 only 2,291 or 12 per cent were sent to federal jails, while 16,783 or 88 per cent were boarded out in state and county jails. In general, only those who are given sentences of one year or more are sent to federal prisons. All other offenders are sent to state or county jails. The average sentence in 1929 was for a period of a little less than five months. Obviously the great majority of the prisoners is not eligible for confinement in federal institutions. Moreover, the federal prisons could not contain all prohibition law violators who are given jail sentences, much less the vast majority of offenders who are let off with fines. The normal capacity of the five federal prisons is 6,978; the actual number of persons in those prisons on April 1, 1930, was 11,907. At present, therefore, there are nearly twice as many persons in federal prisons as they were designed to accommodate.

In a supplementary table (Table VII, page 24) are given all of the available facts as to the distribution of prisoners convicted for violation of the national prohibition law. The number of persons sentenced for the years from 1923 to 1926 has been estimated, but the number for the years 1927 to 1929, inclusive, is taken from the Prohibition Unit's reports. The number of persons reported as sent to either federal institutions or to state and county jails is taken from reports of the Attorney General. As indicated earlier, the federal government has no record of all of the federal prisoners sent to county jails and workhouses. The Attorney General's report does, however, account for a few of these institutions and these figures are given in the supplementary tables. It is clear from this record that the vast majority of federal prisoners is cared for in state and county institutions.

The director of the United States Prison Bureau estimates that on April 1, 1930, there were approximately 13,500 federal prisoners confined in county jails. The number received during a year has been estimated at over 60,000. A large proportion of these boarded-out prisoners are persons convicted of violating the national

prohibition law. According to our estimate, during the year 1929 16,806 persons, prohibition violators, were sent to state and county institutions.

The overcrowded condition of federal prisons has resulted in an appropriation of seven million dollars for the construction of new federal prisons and jails. Work on the new prisons has already begun. United States Attorney General Mitchell has said that the appropriation is inadequate and that shortly more money will be needed.

PROHIBITION AND THE CRIME PROBLEM

It is impossible to measure accurately the extent to which the widespread violation of the Volstead act is responsible for the alarming increase in all forms of crime in this country. It is even difficult to determine accurately what proportion of the population of our jails and prisons is sent there for violation of liquor laws. An example of the misinformation on this point which gains currency is contained in a statement made by President Hoover in an address before the Associated Press on April 22, 1929. He said:

> In order to dispel certain illusions in the public mind on this subject, let me say at once that while violations of law have been increased by inclusion of crimes under the eighteenth amendment and by the vast sums that are poured into the hands of the criminal classes by the patronage of illicit liquor by otherwise responsible citizens, yet this is but one segment of our problem. I have purposely cited the extent of murder, burglary, robbery, forgery, and embezzlement, for but a small percentage of these can be attributed to the eighteenth amendment. In fact, of the total number of convictions for felony last year, less than 8 per cent came from that source. It is therefore but a sector of the invasion of lawlessness.

Certainly "but a small precentage of these (felonies) can be attributed to the eighteenth amendment." We have already shown that 88 per cent of those sentenced in the federal courts for violation of the prohibition law are put in the class of misdemeanants and not felons. It would be just as sensible to try to estimate the number of murders in the United States by looking for them in the records of convictions for misdemeanors.

In the federal penal code only those sentences which exceed one year are considered felony convictions. The practice in most of the states is to send only those persons to state prisons and penitentiaries who have committed felonies. Therefore the number of persons sent to state and federal prisons and penitentiaries is only a small proportion of the number of persons sentenced for violation of liquor laws.

On June 6, 1930, United States Representative Bachmann made a carefully prepared address in Congress and presented voluminous statistics showing the number of federal and state prisoners and the proportion of these prisoners who were committed for liquor law violations. Congressman Bachmann's figures indicate that from 1927 to 1930, between 4,125 and 4,037 prisoners were sent to state penitentiaries for the violation of state prohibition laws and that during the same period from 964 to 3,121 persons were sent to federal prisons. The inference which might be drawn from these figures is that roughly between seven and eight thousand persons are sent to jail for liquor law violations.

Congressman Bachmann, however, was careful to point out that these figures did not include the number of persons sent to county and municipal jails. He said: "There are no figures available to show the number of prisoners confined in the county and municipal jails under sentence for misdemeanor for violation of State prohibition laws, nor are figures available to show what percentage of the violators of State prohibition laws are sentenced to the county and municipal jails. If it were possible to determine with any degree of certainty the number of prisoners confined in the 3,703 county jails in the United States for misdemeanor, it would provide much valuable information in solution of the crime problem of the country."

Such figures were collected by the United States Census Bureau for the year 1923. They have not been compiled since. On the basis of the 1923 figures, however, we may make a rough estimate of the number of persons sent to all types of penal institutions for liquor law violations.

Liquor Law Prisoners

In 1923 the census reports show that there were 39,340 persons who were sent to jails, workhouses, prisons and penitentiaries for liquor law violations both national and state. We have no record of the number of persons convicted in state courts of liquor law violations nor do we know how many so convicted are given prison sentences and how many are let off with fines. We may assume, however, that in state courts convictions

have increased at about the same rate as convictions in federal courts and that approximately the same proportion in each case is given jail sentences or fined. From 1923 to 1930 the number of convictions in federal courts of prohibition violators has increased practically 30 per cent. If this rate of increase applies to state as well as to federal prisoners, the probable number of liquor law prisoners of all types in federal, state and county institutions is over 50,000.

Prison Costs

Practically all of the increase in the cost of the care of federal prisoners since 1920 can be attributed to the burden imposed by the prohibition law. The total number of prisoners accounted for in federal institutions increased from 7,808 in 1923 to 11,192 in 1929 (see Table VIII, page 25). This is an increase of 43 per cent. If, however, we deduct from this total number of prisoners accounted for, the number sentenced for violation of the Volstead act, the total number of prisoners has remained practically stationary. The number of federal prisoners accounted for in 1923 was 7,711 exclusive of prohibition violators. In 1929 the number was 7,603, a decrease of 1.5 per cent.

It is fair to assume, therefore, that most of the increase in federal expenditures for prisons and the maintenance of prisoners is attributable to the prohibition law. We can not be sure, because we do not know exactly what proportion of the boarded-out prisoners are prohibition violators. Nor do we know at what rate boarded-out prisoners have increased. The total expenditures for all prison work by the federal government in 1923 were $3,353,454. Expenditures in 1930 were $9,015,628. This is an increase of 169 per cent, which is chiefly chargeable to prohibition.

Prohibition and Lawlessness

No one can say positively to what extent prohibition is responsible for the growth of lawlessness in our country. It is generally admitted by all who have given serious study to the crime problem that the underworld is largely financed through the huge profits of the illicit liquor trade. Two quotations from the summary report of the Illinois Association for Criminal Justice on "Organized Crime in Chicago" in this connection are significant:

> Finally with the coming of prohibition, the personnel of organized vice took the lead in the systematic organization of this new and profitable field of exploitation. All the experience gained by years of struggle against reformers and concealed agreements with politicians was brought into service in organizing the production and distribution of beer and whiskey.

The report adds:

> There is no blinking the fact that prohibition has introduced the most difficult problems of law enforcement in the field of organized crime. The enormous revenues derived from bootlegging have purchased protection for all forms of criminal activities and have demoralized law enforcing agencies.

Is Crime Increasing?

Prison statistics give an inadequate picture of the extent of crime in this country. Professor Harry Best in a recent book* says:

> Of the extent of crimes which are not reported to the police or which are not known to the public, we have no means of knowing; but it is undoubtedly very large. Of reported cases of felony in general hardly more than one-half, sometimes less than one-half, are apprehended or undergo arrest.

Professor Best says further that only about one-fourth are held for grand jury action, only one-fifth are indicted, one-eighth convicted and only one-tenth are sentenced. Of those indicted about two-thirds are convicted and about one-half are sentenced.

The use of the suspended sentence and the substitution of fines for imprisonment keep down the prison population. For these reasons the number in prison today can not be fairly compared with the number in prison ten or twenty years ago, when the suspended sentence and fines instead of commitments were less generally used.

Certainly prohibition has not decreased the crime problem nor lightened the burden of our penal institutions, in spite of the roseate prophesies of prohibitionists. It was claimed that the adoption of the Eighteenth Amendment would reduce crime at least 50 per cent. The only comparable figures of prison population are the special reports of the United States Census Bureau. Figures are available for certain years from 1904 to 1927. Except for the year 1923 the figures refer only to the population of federal and state reformatories, and do not include the much larger group in county and municipal jails.

* "Crime and the Criminal Law in the United States"—Macmillan, 1930.

Census of Federal and State Prisoners

Year	Prisoners in Federal and State Prisons on January 1st	Rate per 100,000 Population
1904	57,070*	69.1
1910	68,735	74.7
1923	81,959	74.0
1926	90,047	82.7
1927	96,125	85.0

*Exclusive of prisoners committed for non-payment of fines.

From 1923 to 1927 the prison rate has increased 11.2 per cent. The increase since 1904 has been 23 per cent. Comparison with 1904 is not quite fair, because undoubtedly a larger proportion of offenders was sent to prison then than in 1927, because the parole system and the suspended sentence were not then in general use.

CONCLUSIONS

The congestion in our federal courts is due solely to national prohibition. If we exclude two wartime acts, the selective draft and espionage acts, as well as prohibition cases, there has been no material increase in the number of criminal cases handled by the federal courts. By 1925 the dockets were cleared of practically all of these wartime cases.

The increase in "normal" criminal cases in the federal courts, exclusive of prohibition and wartime cases, since 1920 has only been 3.9 per cent. This rate of increase is considerably less than half the rate of increase in the population of the country.

Civil cases to which the United States is a party have been greatly increased by padlock injunctions and libel suits brought in under prohibition. Such civil cases have increased 347 per cent since 1920, but if we exclude prohibition actions the increase is only 117 per cent.

Federal courts and the personnel of the Attorney General's department have never been increased sufficiently to take care of the 70,000 prohibition cases which the courts must handle each year. In spite of the resort to "bargain day" proceedings and the injunctive process to avoid jury trials, federal court calendars are still congested. Other important work of the federal courts, both

criminal and civil cases as well as private suits and bankruptcy proceedings, has been seriously retarded. Because of the crowded dockets many private civil suits are now settled out of court.

Federal prisons are now filled to twice their normal capacity. If there had been no prisoners for violation of the Volstead act there would have been no increase in the number of federal prisoners since 1920. Last year 16,783 persons convicted of violating the prohibition law were boarded out in state and county jails, to add to the already overcrowded condition of these local institutions.

The effect of liquor law violations, both state and federal, on the crime problem can not be measured by the number sent to federal and state prisons and penitentiaries. Only a small proportion of those convicted are given felony sentences. No one knows exactly how many liquor law violators are now in federal, state and county penal institutions. According to our conservative estimate there are at least 50,000 such prisoners.

In this brief report we have not attempted to trace the indirect effect of prohibition on lawlessness in general. All persons who have studied the problem agree that the enormous profits from the illicit liquor trade are now used to finance the underworld and to strengthen the grip of criminal gangs in communities throughout the country.

TABLE I

All Criminal Cases Terminated Less Prohibition, Espionage and Draft Cases

Year	All Criminal Prosecutions Terminated in Federal Courts	Prohibition Cases Terminated	Selective Draft Cases Terminated	Espionage Act Cases Terminated	Net
1910	15,371	.....	.....	....	15,371
1911	14,702	.....	.....	....	14,702
1912	16,158	.....	.....	....	16,158
1913	16,757	.....	.....	....	16,757
1914	18,128	.....	.....	....	18,128
1915	19,120	.....	.....	....	19,120
1916	20,432	.....	.....	....	20,432
1917	17,671	.....	.....	....	17,671
1918	30,949	.....	10,027	492	20,430
1919	35,734	.....	7,873	1,179	26,682
1920	34,230	5,095	1,159	202	27,774
1921	47,299	21,297	1,803	41	24,158
1922	53,155	28,743	2,681	....	21,731
1923	68,152	42,730	1,242	....	24,180
1924	73,488	46,609	3,050	....	23,829
1925	92,711	47,925	18,471	....	26,315
1926	76,536	48,529	3,090	....	24,917
1927	67,279	40,748	288	....	26,243
1928	88,336	58,429	1,857	....	28,050
1929	85,328	56,455	8	....	28,865

TABLE II

Criminal Prohibition Cases Prosecuted in Federal Courts

Year Ending June 30th	Number Terminated	Convicted		Acquitted		"Nolle Prossed"		Dismissed	
		Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent
1920.....	5,095	4,315	84.7	125	2.5	623	12.2	32	.6
1921.....	21,297	17,962	84.3	765	3.6	2,179	10.2	391	1.9
1922.....	28,743	22,749	79.2	1,195	4.2	3,549	12.3	1,250	4.3
1923.....	42,730	34,067	79.7	1,770	4.1	4,857	11.4	2,036	4.8
1924.....	46,609	37,181	79.8	1,754	3.8	5,356	11.5	2,318	4.9
1925.....	47,925	38,498	80.3	1,805	3.8	5,500	11.5	2,122	4.4
1926.....	48,529	37,018	76.3	1,303	2.7	7,580	15.6	2,628	5.4
1927.....	40,748	31,717	77.8	949	2.3	6,377	15.7	1,705	4.2
1928.....	58,429	48,820	83.6	1,431	2.4	6,114	10.5	2,064	3.5
1929.....	56,455	47,100	83.4	1,477	2.6	4,835	8.6	3,043	5.4
1930[1].....	52,437	44,276	84.4	1,501	2.9	6,660[2]	12.7[2]	.....	....

[1] Preliminary figures.

[2] "Nolle prossed" and dismissed.

TABLE III

Pleas of Guilty and Jury Trials in Federal Courts

Year Ending June 30th	PROHIBITION CASES					ALL OTHER CASES				
	Total Convictions	Pleas of Guilty		Jury Trials		Total Convictions	Pleas of Guilty		Jury Trials	
		Number	Per Cent	Number	Per Cent		Number	Per Cent	Number	Per Cent
1920	4,135	4,109	95.2	206	4.8	19,306	15,547	80.5	3,759	19.5
1921	17,962	16,610	92.5	1,352	7.5	14,784	11,926	80.7	2,858	19.3
1922	22,749	20,571	90.4	2,178	9.6	13,993	11,012	78.7	2,981	21.3
1923	34,067	30,654	90.0	3,413	10.0	14,609	11,060	75.7	3,549	24.3
1924	37,181	33,834	91.0	3,347	9.0	15,428	12,366	80.2	3,062	19.8
1925	38,498	35,034	91.0	3,464	9.0	18,252	15,952	87.4	2,300	12.6
1926	37,018	34,233	92.5	2,785	7.5	17,128	14,046	82.0	3,082	18.0
1927	31,717	28,881	91.1	2,836	8.9	16,042	12,375	74.4	4,267	25.6
1928	48,820	45,295	92.8	3,525	7.2	20,442	16,454	80.5	3,988	19.5
1929	47,100	43,183	91.7	3,917	8.3	20,155	15,417	76.5	4,738	23.5

TABLE IV

Results of Jury Trials in Prohibition Cases

Year	Total Trials	Convictions		Acquittals	
		Number	Per Cent	Number	Per Cent
1920	331	206	62.3	125	37.7
1921	2,117	1,352	63.9	765	36.1
1922	3,373	2,178	64.6	1,195	35.4
1923	5,183	3,413	65.8	1,770	34.2
1924	5,101	3,347	65.6	1,754	34.4
1925	5,269	3,464	65.7	1,805	34.3
1926	4,088	2,785	68.1	1,303	31.9
1927	3,785	2,836	74.9	949	25.1
1928	4,956	3,525	71.1	1,431	28.9
1929	5,394	3,917	72.6	1,477	27.4

TABLE V

Criminal Cases Pending at End of Year, "Nolle Prossed" and Dismissed

Year	Prohibition Cases		All Other Cases	
	Pending	"Nolle Prossed" and Dismissed	Pending	"Nolle Prossed" and Dismissed
1920	2,196	655	47,778	7,894
1921	10,365	2,570	46,747	9,508
1922	16,713	4,799	47,636	8,876
1923	23,052	6,893	44,482	9,211
1924	22,329	7,674	41,614	10,103
1925	24,684	7,622	22,041	25,241*
1926	20,749	10,208	18,109	9,653
1927	21,059	8,082	14,327	8,684
1928	18,259	8,178	12,118	8,311
1929	18,690	7,878	12,810	7,187

*In this year 18,467 selective draft cases were "nolle prossed" or dismissed.

TABLE VI

Civil Cases Tried Under National Prohibition Act

Year Ending June 30th	Number Terminated	Judgments for the United States		Judgments against the United States		Dismissed[2]	
		Number	Per Cent	Number	Per Cent	Number	Per Cent
1920	92	80	86.9	10	10.9	2	2.2
1921	622	466	74.9	34	5.5	122	19.6
1922	1,537	1,207	78.5	141	9.2	189	12.3
1923	2,670	1,928	72.2	232	8.7	510	19.1
1924	4,210	3,242	77.0	244	5.8	724	17.2
1925	5,927	4,471	75.4	444	7.5	1,012	17.1
1926	8,338	5,610	67.3	416	5.0	2,312	27.7
1927	10,419	7,469	71.7	413	4.0	2,537	24.3
1928	8,617	6,613	76.7	366	4.3	1,638	19.0
1929	10,961	9,006	82.2	305	2.8	1,650	15.0
1930[1]	12,938	10,478	81.0	388	3.0	2,072	16.0

[1] Preliminary figures.

[2] "Dismissed or discontinued after payment or compromise" and for "other reasons."

TABLE VII

Distribution of Prisoners Receiving Sentences Under the National Prohibition Act

Year	Sentenced	Reported as Sent to Federal Institutions	State and County Jails	Unaccounted for (Presumably in County Jails)
1923	10,912*	21	76	10,815
1924	11,775*	10	95	11,670
1925	12,164*	21	752	11,391
1926	13,515*	478	1,359	11,678
1927	11,818	769	1,271	9,778
1928	15,793	1,239	1,291	13,263
1929	19,074	2,291	1,298	15,485

*Estimated.

TABLE VIII

Number of Prisoners Reported by United States Attorney General, and Prison Expenditures

Year	Total Prisoners Received	Exclusive of Volstead Act Prisoners	Expenditures for Federal Prisoners
1923	7,808	7,711	$3,353,454
1924	6,427	6,322	3,479,219
1925	8,098	7,325	4,324,943
1926	7,844	6,007	5,787,731
1927	7,981	5,921	6,422,119
1928	9,348	6,818	5,935,405
1929	11,192	7,603	7,799,347
1930	.....	.....	9,015,628

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SIDNEY M. EHRMAN, Nevada Bank Building, San Francisco, California. *Lawyer.*

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